

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

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RESPONDENTS: J. Edgar Broyhill III
Broyhill for Congress, and
Laney Orr, Jr., in his official capacity as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a-1(a)
2 U.S.C. § 441a-1(b)

11 C.F.R. § 400.10
11 C.F.R. § 400.21
11 C.F.R. § 400.22
11 C.F.R. § 400.25

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter concerns new reporting requirements, arising under the so-called "millionaires' amendment" of the Bipartisan Campaign Reform Act, which obligate candidates to comply with special reporting and notification requirements after expending personal funds in excess of specific thresholds. The Reports Analysis Division ("RAD") has referred Broyhill for Congress (the "Committee"), the authorized committee of congressional candidate J. Edgar

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1 Broyhill III, for its failure to timely file a statement notifying the Commission and Mr. Broyhill's
2 opponents that Mr. Broyhill surpassed the applicable thresholds, which might trigger higher
3 contribution limits for his opponents, by expending over \$350,000 in personal funds in support
4 of his candidacy and for failing to timely file additional notifications for additional expenditures
5 of personal funds exceeding \$10,000 in support of his candidacy. In addition, a review of Mr.
6 Broyhill's notifications suggests additional violations of the Federal Election Campaign Act of
7 1971, as amended (the "Act").

8 Based on a review of the relevant disclosure reports and available information, this Office
9 recommends that the Commission find reason to believe that the Committee violated provisions
10 of the Act regarding the reporting of personal funds expenditures. Because these laws create
11 specific obligations for candidates, this Office recommends that the Commission also find that J.
12 Edgar Broyhill III violated the Act.

13 **II. FACTUAL SUMMARY**

14 J. Edgar Broyhill III declared his candidacy for North Carolina's Fifth District seat in the
15 United States House of Representatives to the Federal Election Commission on July 22, 2003 by
16 filing an FEC Form 2, Statement of Candidacy. As part of the Form 2, Mr. Broyhill declared his
17 intention not to spend personal funds in excess of \$350,000 in the primary or general elections.¹

¹ Expenditures from personal funds exceeding \$350,000 require House candidates to comply with special filing and notification requirements and may entitle the candidate's opponents to higher contribution and coordinated expenditure limits. See 2 U.S.C. § 441a-1(a)(1) and 2 U.S.C. § 441a-1(b)(1)(C). The form requests information on both the primary and general elections. Mr. Broyhill placed third in the July 20, 2004 Republican primary election and, therefore, was not a candidate in the subsequent run-off or general election.

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1 Mr Broyhill started to spend personal funds on his campaign on July 1, 2003. Between
2 July 1, 2003 and December 26, 2003, Mr. Broyhill expended \$326,500 in personal funds on his
3 campaign.² On March 1, 2004, Broyhill made a \$50,000 loan to the Committee, increasing his
4 total personal expenditures to \$376,500. By expending over \$350,000, the Committee and
5 candidate were obligated to file with the Commission and with Mr. Broyhill's opponents an FEC
6 Form 10, Notification of Expenditures from Personal Funds, within 24 hours of the threshold
7 expenditure, or by March 2, 2004. *See* 2 U.S.C. § 441a-1(b)(1)(C). The Committee did not file a
8 Form 10 with the Commission until March 12, 2004. Furthermore, the form filed by the
9 Committee listed the total amount of expenditures from personal funds as \$375,000. This figure
10 omitted \$1,500 in contributions made by Mr. Broyhill in July 2003. *See supra* n.2.

11 In addition, the Committee untimely filed four additional FEC Form 10s regarding
12 additional loans in excess of \$10,000 made by Broyhill to the Committee on March 12, 2004,
13 April 30, 2004, June 8, 2004, and June 19, 2004, in the amounts of \$25,000, \$150,000, \$50,000,
14 and \$50,000, respectively.³ Each of these FEC Form 10s, as well as nine FEC Form 10s that
15 were timely filed, also failed to take into account Broyhill's \$1,500 in contributions from the
16 total amount of personal funds expenditures. Further, the Committee completely failed to file a
17 Form 10 for a loan made on June 28, 2004, in the amount of \$90,000.

² Mr Broyhill made contributions to the Committee of \$1,000 on July 1, 2003 and \$500 on July 31, 2003. He made loans of \$200,000 and \$125,000 on September 30, 2003 and December 26, 2003, respectively

³ On June 16, 2004, the Committee filed a Form 10 regarding a loan of \$60,000 on June 15, 2004

On May 18, 2004, RAD sent a Request For Additional Information ("RFAI") to the Committee requesting an explanation for the late filed FEC Form 10s received by the Commission on March 12, 2004 and March 25, 2004. In a follow-up conversation with RAD, the Committee claimed that it thought the filing threshold for FEC Form 10 was \$375,000. On July 20, 2004, RAD sent the Committee additional RFAs requesting explanations for the late filed FEC Form 10s filed on May 31, 2004, June 14, 2004, and June 24, 2004, and the failure to file an FEC Form 10 for the loan made by Broyhill to the Committee on June 28, 2004. In a subsequent conversation with RAD, the Committee's campaign manager, Kim Hutchins, claimed to have no knowledge of these omissions, but stated he would look into the matter and file an explanation as soon as possible. To date, no further communications have been received from the Committee regarding this matter.

III. LEGAL ANALYSIS

When a candidate to the U.S. House of Representatives makes aggregate expenditures from personal funds of \$350,000 or more, the candidate or his or her authorized committee shall file a notification of the expenditure (FEC Form 10) within 24 hours of exceeding the threshold.⁴ 2 U.S.C. § 441a-1(b)(1)(C). For each additional expenditure of \$10,000 or more, the candidate is required to file an additional notification within 24 hours. 2 U.S.C. § 441a-1(b)(1)(D). These notifications must be filed with the Commission, each candidate in the same election, and the

⁴ An expenditure from personal funds includes direct contributions, an expenditure made by a candidate using personal funds, loans made by a candidate using personal funds, or a loan secured using such funds to the candidate's authorized committee 2 U.S.C. § 441a-1(b)(1)(A)

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1 national party of each such candidate and must include, among other things, the date and amount
2 of the expenditures and the total amount expended as of the date of the filing.⁵
3 2 U.S.C. §§ 441a-1(b)(1)(E) and (F). Although FEC Form 10 is signed by the committee
4 treasurer, the candidate is responsible for ensuring that it is filed in a timely manner. *See*
5 11 C.F.R. § 400.25.

6 Broyhill's notification of personal spending over \$350,000 was not filed until ten days
7 after it was due. Therefore, this Office recommends that the Commission find reason to believe
8 that Broyhill for Congress and Laney Orr, Jr., in his official capacity as treasurer, violated
9 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. § 400.21(b). Since the Act places a requirement on the
10 candidate to ensure that the appropriate filings are made in a timely manner with respect to
11 expenditures from personal funds, this Office recommends that the Commission also find reason
12 to believe that J. Edgar Broyhill III violated 2 U.S.C. § 441a-1(b)(1)(C).

13 In addition, as Mr. Broyhill continued to expend personal funds throughout the campaign,
14 the Committee failed to file one Form 10 and untimely filed four additional Form 10s.
15 Therefore, this Office recommends that the Commission find reason to believe that J. Edgar
16 Broyhill III, Broyhill for Congress, and Laney Orr, Jr., in his official capacity as treasurer,

⁵ A candidate's personal expenditures could entitle his opponents to a threefold increase in the contribution limit under 2 U.S.C. § 441a(a)(1)(A) and a waiver of the limits on coordinated party expenditures under 2 U.S.C. § 441a(d). *See* 2 U.S.C. § 441a-1(a)(1). Candidates are entitled to higher limits when the "opposition personal funds amount" exceeds \$350,000. The opposition personal funds differs from the threshold reporting amount of \$350,000 because it takes into account the personal funds expenditures of the other candidates and the gross receipts of both candidates. 2 U.S.C. § 441a-1(a)(2). A candidate with a significant "gross receipts advantage" is less likely to qualify for the higher limits. *See* 2 U.S.C. § 441a-1(a)(2)(B)(ii). Similarly, a candidate seeking higher limits may be limited by the amount of personal funds that he or she expended. *See* 11 C.F.R. § 400.10.

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1 violated 2 U.S.C. § 441a-1(b)(1)(D) and that Broyhill for Congress, and Laney Orr, Jr., in his
2 official capacity as treasurer, violated 11 C.F.R. § 400.22(b).

3 An additional violation appears to have occurred with respect to the contents of the Form
4 10s filed by the Committee. 2 U.S.C. § 441a-1(b)(1)(E). Each Form 10 filed with the
5 Commission must include, among other things, "the total amount of expenditures from personal
6 funds that the candidate has made, or obligated to make, with respect to an election as of the date
7 of the expenditure that is the subject of the notification." 2 U.S.C. § 441a-1(b)(1)(E)(iii). In this
8 instance, each of the fourteen Form 10s filed by the Committee omitted two contributions made
9 by Broyhill totaling \$1,500.⁶ Accordingly, this Office recommends that the Commission find
10 reason to believe that J. Edgar Broyhill III, Broyhill for Congress, and Laney Orr, Jr., in his
11 official capacity as treasurer, violated 2 U.S.C. § 441a-1(b)(1)(E).

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⁶ See supra n 2

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V. RECOMMENDATIONS

1. Open a MUR;
2. Find reason to believe that Broyhill for Congress and Laney Orr, Jr., in his official capacity as treasurer, violated 2 U.S.C. § 441a-1(b)(1)(C), 2 U.S.C. § 441a-1(b)(1)(D), 2 U.S.C. § 441a-1(b)(1)(E), 11 CFR § 400.21(b), and 11 CFR § 400.22(b);
3. Find reason to believe that J. Edgar Broyhill III, violated 2 U.S.C. § 441a-1(b)(1)(C), 2 U.S.C. § 441a-1(b)(1)(D) and 2 U.S.C. § 441a-1(b)(1)(E);
- 4.
5. Approve the attached Factual and Legal Analyses; and


6. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Lawrence Calvert, Jr.
Deputy Associate General Counsel for Enforcement

2/2/05
Date

BY: 
Ann Marie Terzaken
Assistant General Counsel


Adam J. Schwartz
Attorney

Attachments

1. Broyhill Factual and Legal Analysis.
2. Broyhill for Congress Factual and Legal Analysis.